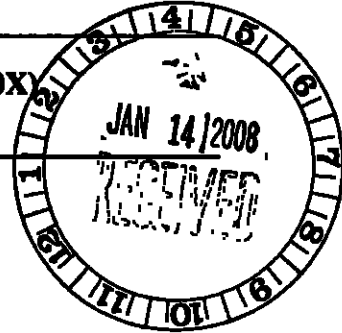


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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-6 (Sub- No. 430X)

**BNSF RAILWAY COMPANY
ABANDONMENT EXEMPTION
IN OKLAHOMA COUNTY, OK**



ENTERED
Office of Proceedings
JAN 14 2008
Part of
Public Record

**REPLY TO BNSF'S
REQUEST FOR EXTENSION OF TIME TO CONSUMMATE ABANDONMENT**

1. Edwin Kessler ("Kessler"), herewith files his Reply to BNSF's Request for Extension of Time to Consummate Abandonment, and states:

**REPLY TO
REQUEST FOR EXTENSION OF TIME TO FILE CONSUMMATION NOTICE**

2. On December 26, 2007, BNSF asked the Board for a **second** extension of time for filing its Notice of Consummation in the above entitled case, until June 30, 2008. The only reason BNSF offered to justify its request for an extension of time, was "weather delays and scheduling difficulties with various construction projects."

3. 49 CFR 1152.29(e)(2) specifically states.

"The notice [of consummation] **shall be filed within 1 year** of the service date of the decision permitting the abandonment." . If, after 1 year from the date of service of a decision permitting abandonment, consummation has not been effected by the railroad's filing of a notice of consummation, and there are no **legal or regulatory barriers** to consummation, the authority to abandon **will automatically expire**. In that event, a new proceeding would have to be instituted if the railroad wants to abandon the line. . For **good cause shown**, a railroad may file a request for an extension of time to file a notice **so long as it does so sufficiently in advance** of the expiration of the deadline for notifying the Board of consummation to allow for **timely processing**."

4 Kessler would argue, because BNSF **has not demonstrated there were legal or regulatory barriers** preventing it from consummating its abandonment of the Line, BNSF **is not** entitled, as a matter of right, to have the date by which it had to consummate abandonment of the Line, extended.

5. Kessler would further argue that BNSF **has not shown good cause** why it should be granted a **second** extension of time within which to file its consummation notice.

A. BNSF was granted authority to abandon the Line **effective November 12, 2005**. BNSF's consummation notice was due on or before **November 12, 2006**.

B. By decision dated October 6, 2006, the Board granted BNSF a **13 ½ month extension** within which to file its notice of consummation, or until **December 31, 2007**. In BNSF's first request for an extension of time to file its notice of consummation, BNSF gave the same excuse it presently is using, to wit: that it was unable to consummate abandonment due to bad weather and scheduling difficulties.

C On December 26, 2007, **only five days before its notice of consummation was due**, BNSF filed a second request for a second extension of time within which to file its notice of consummation, reiterating the same lame excuse it used more than 14 months ago.

D. Using "inclement weather and scheduling difficulties" as an excuse for its failure to timely consummate its abandonment, may have been plausible the first time it was offered. Using "inclement weather and scheduling difficulties" a second time, particularly in light of the fact that the summer of 2007 was one of the driest on record for Oklahoma, calls into question BNSF's credibility. How difficult is it to remove 2.95 miles of Line that essentially is on flat ground, has no vegetative growth on it, and is easily accessible? For a class I carrier to say it could not work into its schedule a 2-week job sometime during the past **27 months**, is about as implausible an excuse as one could imagine.

6. Kessler would further argue that BNSF's second request for an extension of time to file its notice of consummation, did not comply with the requirements of 49 CFR 1152.29(e)(2), specifically: Its request for an extension of time was **not** filed **"sufficiently in advance of the expiration of the deadline for notifying the Board of consummation to allow for timely processing."**

- A. BNSF waited until December 26, 2007 to file its request for an extension of time.
- B The Board only had two working days following BNSF's filing within which to render a decision. (December 27 & 28, 2007. The Board was closed between December 29, 2007 and January 2, 2008.)
- C. BNSF was fully aware of the Board's holidays schedule, and was fully aware that many Board employees took a much deserved holiday over the Christmas - New Year holiday period
- D. The Board's regulations specifically grant Kessler 20 days within which to file a reply to BNSF's request for an extension of time, or until January 15, 2008, or some 2 weeks past the deadline date.

7 For the foregoing reasons, Kessler would ask that the Board:

- A FIND that BNSF did not carry its burden of proving its failure to consummate its abandonment of the Line was due to legal or regulatory barriers, and
- B FIND that BNSF did not carry its burden of showing good cause why it needed even more than the 13 ½ months of extra time the Board had already provided it with, to consummate its abandonment of the Line; and
- C. FIND that BNSF did not submit its request for a second extension of time **"sufficiently in advance of the expiration of the deadline for notifying the Board of consummation to allow for timely processing;"** and
- D. DECLARE that BNSF's authority to abandon the Line automatically expired on December 31, 2007; and
- E. DECLARE that if BNSF still desires to abandon the Line, then BNSF shall be required to institute a new proceeding, which new proceeding should not be instituted

until BNSF is able to work abandonment of the Line into its busy schedule; and
F For such other relief as would be appropriate and just.

Respectfully submitted,


Edwin Kessler

CERTIFICATE OF SERVICE

I hereby certify that on this ~ 14th day of January, 2008, a copy of the foregoing Reply to BNSF's Request for Extension of Time to Consummate Abandonment, was served by first class mail, postage prepaid, upon the parties of record noted below.


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22/262

Scoping Comment for the Proposed Canadian Railway Company Acquisition of the
Elgin, Joliet and Eastern Railway Company
STB Finance Docket No 35087

Being a resident of North Barrington, miles from the sights and sounds of the rail lines crossing through the Village of Barrington, my initial concern about the increased use of the EJ&E line was the inconvenience of even more traffic congestion in our area. However, as I think about our neighbors living in the Village, about our children's daily commute to schools within the Village, and about emergency services for the entire area, I realize the proposed EJ&E acquisition is a serious threat to our community's future.

Traffic around the Village of Barrington & Lake Zurich backs up daily during morning and afternoon commutes, especially through Route 59, Elia and Northwest Highway. Additional impediments to traffic flow created by increased freight on the EJ&E will put the entire area into gridlock. The impact on businesses within the Village of Barrington would be disastrous. My family most certainly would seek alternatives to our favored doctors, shops & restaurants given the expected delays. We would be leaving businesses that have served us well for the 10 years we have lived here. Village residents and business owners who have invested time and money into their properties, many of them historical, will see their values plummet and their quality of life disappear.

The school bus system would be rendered inoperable with the proposed number of freight trains running through the Village, as the buses cross the eight EJ&E crossings continuously from 6 a.m. until 6 p.m. My children currently have a 50 minute bus ride to Prairie Middle School, crossing the line at Elia near Highway 12, and are often late due to traffic congestion as it exists now. There is no way to transport the children in CUSD 220 within a reasonable amount of time or according to a dependable schedule with the proposed railway use.

Most critically, the line separates Barrington's Good Shepherd Hospital from The Garlands Senior Housing of Barrington & Governor's Park Nursing Home, over half of CUSD 220 schools, Ron Beese & Citizens Park Sports Fields and half of the Village residents. Ambulance delays are inevitable. The Police & Fire Department is separated from Barrington High School as well as two elementary schools. Police, fire & rescue services must cross the line in nearly every imaginable emergency scenario.

The CN acquisition and proposed use of the EJ&E will not only result in environmental and financial ruin of the thriving Village of Barrington, but also will make existing school transportation for CUSD 220 impossible and impede emergency services to the entire greater Barrington area.

Catherine Howes
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January 14, 2008